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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on October 31, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST 2003-16432 - 2

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: VOLGA-DNEPR J.S. CARGO AIRLINE

Date Filed: October 29, 2003

Relief requested: Exemption from 49 U.S.C. section 40109(g) to permit the applicant to operate one, one-way cargo charter flight from Denver, Colorado, to Cape Canaveral, Florida, on or about November 6, 2003, using its AN-124-100 aircraft, to carry Lockheed Martin Space Systems Atlas/Centaur IIA Launch Vehicle, on behalf of Lockheed Martin. The applicant stated that Lockheed Martin needs prompt shipment of this cargo to Cape Canaveral to complete aggressive schedules that include integration activities and subsequent launch processing, that the cargo is too large for transportation on U.S.-carrier aircraft; and that surface transportation is not feasible because of the delicate nature and high value of the cargo, and conditions unsuitable to maintaining system integrity compliance.

Applicant representative: Glenn P. Wicks, 202-457-7790

DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: Volga-Dnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations and that it had no comment or did not oppose grant of the requested authority.

Statutory Standards: Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here).

DISPOSITION

Action: Approved

Action date: October 31, 2003

Effective dates of authority granted: October 31, 2003, through November 9, 2003

Basis for approval: We are granting Volga-Dnepr's request to operate its proposed one-way flight from Denver to Cape Canaveral, through November 9, 2003. We found that its request met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type and that the grant was required in the public interest. Specifically, we were persuaded that the need to move the cargo promptly in order to meet the urgent integration and launch schedules, the fact that the cargo could not be transported by surface transportation because of its delicate nature and high value, the potential negative impact of delivery delay; and the unique, outsized nature of the cargo, constituted an emergency not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available that could be used to conduct the operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to Lockheed Martin Space Systems. Finally, we found that the applicant was qualified to perform its proposed operation.

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions and to the condition that the applicant must comply with an FAA-approved flight routing for the authorized operation.

Action taken by: **Michael W. Reynolds**
Acting Assistant Secretary for
Aviation and International Affairs

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